

February 14, 2010

CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

0002412845

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## UNITED STATES BANKRUPTCY COURT

## EASTERN DISTRICT OF CALIFORNIA

## SACRAMENTO DIVISION

In re:

KOBRA PROPERTIES, a  
 California general partnership et  
 al.,

Debtors.

CASE NO.: 08-37271-C-11

Chapter 11

Jointly Administered

DCN: FWP-23

Date: January 14, 2010

Time: 2:00 p.m.

Judge: Honorable Christopher Klein

Courtroom: 35, Department C

**ORDER AUTHORIZING AND APPROVING (1) SALE OF PROPERTY AT 1075 SOUTH  
 MAIN STREET, RED BLUFF, CALIFORNIA FREE AND CLEAR OF CERTAIN LIENS,  
 CLAIMS, AND ENCUMBRANCES, (2) PAYMENT OF UNDISPUTED OR  
 COMPROMISED LIENS AND (3) RELATED RELIEF**

**[PROPERTY NUMBER A-8]**

On October 20, 2009, Steven L. Victor, as Trustee (the "Trustee") of the Chapter 11 estate of Kobra Properties, a California general partnership ("Debtor"), filed the Chapter 11 Trustee's Motion for the Entry of Orders (I) Approving Sale Procedures with Respect to the Sale of Real Property and Overbid Procedures, Including Break-Up Fee Relating Thereto, (II) Authorizing the

<sup>1</sup> The Debtors in these jointly administered bankruptcy cases are: Kobra Properties, a California general partnership, Kobra Preserve, LLC, a California limited liability company, Vernon Street Associates, LLC, a California limited liability company, and Rocky Ridge Center, a California limited liability company.

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February 11, 2010

CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
0002412845Order Approving Sale of Real Property  
[1075 South Main Street]

1 Sale of Real Property Free and Clear of All Liens, Claims, and Encumbrances Pursuant to Section  
2 363 of the Bankruptcy Code, and (III) Authorizing the Sale by Auction of Additional Real  
3 Property (the "Sale Motion"), seeking entry of orders approving certain sale procedures and  
4 related relief regarding twenty-four (24) separate real property assets and improvements thereon  
5 owned by the Kobra Properties Chapter 11 estate (the "Estate"). Included among the assets to be  
6 sold is real property and improvements thereon commonly known as 1075 South Main Street,  
7 Red Bluff, California, and also known as Jack in the Box #3403 (Tehama County APN 033-180-  
8 68) (the "Transferred Assets"). In the Sale Motion, the Trustee requested that the relief sought in  
9 the Sale Motion be granted on a bifurcated basis, such that the Court first approve the sale  
10 procedures, including auction and bidding procedures, and determine that the Transferred Assets  
11 may be sold free and clear of certain liens, claims, and encumbrances, and that the Court schedule  
12 a post-auction final hearing (the "Sale Return Hearing") for the Court to consider all other  
13 requested relief, including approval of the sale of the Transferred Assets to the successful bidder.

14 On December 9, 2009, the portion of the Sale Motion regarding the Trustee's request for  
15 approval of sale procedures came before the Court. Following consideration of all filed  
16 documents and arguments made by counsel at such hearing, and for the reasons stated by the  
17 Court during the course of such hearing, the Court overruled all objections and entered its Order  
18 (I) Granting Trustee's Modified Motion for Order Approving Real Property Sale Procedures  
19 Including Sale by Auction, (II) Authorizing the Sale of Real Property Free and Clear of Certain  
20 Liens, Claims, and Encumbrances Pursuant to Section 363 of the Bankruptcy Code, and (III)  
21 Scheduling Sale Return Hearing on January 6, 2010 (the "Procedures Order"). The Procedures  
22 Order approved the sale procedures (the "Sale Procedures"), scheduled the auction (the  
23 "Auction") for January 14, 2010, at 9:30 a.m., and scheduled the Sale Return Hearing for January  
24 14, 2010, at 2:00 p.m.

25 Thereafter, on January 14, 2010, after the Court called the Auction to order and presided  
26 over a review of qualified bidders and opening bids, the Trustee conducted the Auction for the  
27 sale of the Transferred Assets, consistent with the Procedures Order.

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1 On January 14, 2010, at 2:00 p.m., the Sale Return Hearing was held following due and  
2 adequate notice. Donald W. Fitzgerald of Felderstein Fitzgerald Willoughby & Pascuzzi LLP  
3 appeared on behalf of the Trustee and all other appearances were noted on the record.

4 Based upon the Sale Motion and evidence filed in support of the Sale Motion and other  
5 relevant documents filed in connection with the Sale Motion, including the record in this case and  
6 the supplemental declaration of the Successful Bidder (as defined below), and all objections to the  
7 Sale Motion having been withdrawn or overruled, and the Court having made its findings of fact  
8 and conclusions of law on the record, and for good cause shown,

9 IT IS HEREBY ADJUDGED AND ORDERED that:

10 1. The Sale Motion shall be and is hereby granted with respect to the Transferred  
11 Assets in accordance with the terms of this Order, to the extent not previously granted pursuant to  
12 the terms of the Procedures Order.

13 2. Jack in the Box Inc. is approved as the successful bidder (the "Successful Bidder")  
14 for the Transferred Assets with the high qualified bid of \$1,420,000.

15 3. The terms, conditions, and transactions contemplated by the Asset Purchase  
16 Agreement entered into between Trustee and Successful Bidder dated as of January 14, 2010 (the  
17 "APA"), which is substantially in conformance with the approved form of Asset Purchase  
18 Agreement submitted in support of the Sale Motion, are approved in all respects and the sale of  
19 the Transferred Assets pursuant to the APA is hereby authorized under the provisions of Sections  
20 363(b), (c), (f), and (m) of the Bankruptcy Code.

21 4. Pursuant to Section 363(b) of the Bankruptcy Code, the Trustee is authorized and  
22 empowered to fully perform under, consummate, and implement the APA and to take all actions  
23 reasonably required to fulfill his obligations under the APA, including without limitation  
24 executing all documents in connection with the sale transaction approved by this Order.

25 5. As previously determined in the Procedures Order, the sale of the Transferred  
26 Assets shall be free and clear of the following liens, claims, encumbrances, or other interests  
27 pursuant to Bankruptcy Code Section 363(f):

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1           a.       Any unrecorded lien, encumbrance, and/or equitable or legal interest in the  
2 Transferred Assets asserted by any person or entity, or their respective predecessors and  
3 successors in interest, unless otherwise expressly provided for by this Order;

4           b.       Any recorded lien, encumbrance, and/or equitable or legal interest in the  
5 Transferred Assets not otherwise expressly provided for by this Order and asserted by any person  
6 or entity, or their respective predecessors and successors in interest, who have received notice of  
7 the Motion; and

8           c.       The claims or interests asserted by any person or entity, or their respective  
9 predecessors and successors in interest, against the Estate which do not constitute liens against or  
10 interests in the Transferred Assets.

11         6.       The Trustee is authorized and directed to pay through escrow directly from the sale  
12 proceeds all amounts due or necessary to satisfy the following obligations as of the closing date  
13 under the APA, which are secured by the following liens and encumbrances:

14           a.       All real property taxes and assessments pro rated as of the closing date, in  
15 the approximate amount of \$15,288, as shall be finally approved by the Trustee through escrow.

16           b.       The deed of trust on the Transferred Assets in favor of Bank of New York,  
17 in the approximate, compromised amount of \$260,879.25, as shall be finally approved by the  
18 Trustee through escrow.

19           c.       The deed of trust on the Transferred Assets in favor of Newcastle  
20 Powerhouse LLC in the compromised, agreed to fixed amount of \$309,158.

21         7.       Bank of New York shall through escrow and as a condition to receipt of payment,  
22 submit for recording an appropriate reconveyance of its deed of trust encumbering, and a release  
23 of any other liens encumbering, the Transferred Assets.

24         8.       Newcastle Powerhouse LLC shall through escrow and as a condition to receipt of  
25 payment, submit for recording (a) an appropriate reconveyance of its deed of trust encumbering  
26 the Transferred Assets and (b) an appropriate reconveyance of its deed of trust encumbering  
27 property commonly known as 3040 Sunrise Blvd., Rancho Cordova, California (Sacramento  
28 County APN 072-0260-043). The payment to Newcastle Powerhouse LLC through escrow is in

1 satisfaction of all claims of Newcastle Powerhouse LLC against the estate and of all claims of the  
2 estate against Newcastle Powerhouse LLC arising out of the loan, and the modifications thereto,  
3 which is the subject of Proof of Claim No. 66.

4 9. The Trustee is authorized to and shall pay through escrow directly from the sale  
5 proceeds to Richard M. Forster and Laurie A. Forster, as Trustees of the Richard M. Forster  
6 Family Trust; Daniel S. Forster and Donna J. Forster, as Trustees of the Forster Family Trust and  
7 John Forster (jointly, "the Forsters") pursuant to a court approved compromise an amount equal  
8 to twenty percent (20%) of the net sale proceeds, in the approximate amount of \$167,209, as  
9 shall be finally approved by the Trustee through escrow. As a condition to payment, the Forsters  
10 shall execute and deliver to escrow all documents necessary to transfer and convey any and all  
11 right, title, and interest they may hold in the Transferred Assets.

12 10. The Trustee is authorized to pay through escrow all other items, if any, payable at  
13 closing by the Trustee, as seller, including any closing costs and related fees and expenses, in  
14 accordance with the terms of the APA. All net proceeds of sale shall be paid over to the Trustee  
15 on behalf of the Estate at close of escrow.

16 11. Except as otherwise set forth in this Order, the provisions of this Order regarding  
17 the sale of the Transferred Assets free and clear of liens and claims shall be self-executing, and  
18 neither the Trustee, the Successful Bidder, nor any third party shall be required to execute or file  
19 releases, termination statements, assignments, consents, or any other instruments in order to  
20 effectuate, consummate, and implement the release provisions of this Order, except as provided in  
21 the APA. Upon the closing date, any and all financing statements, judgments, liens, and  
22 mortgages filed of record, or any other documents evidencing any of the Section 363(f) interests  
23 shall automatically be discharged, terminated, and released, and of no force or effect as to the  
24 Transferred Assets.

25 12. The APA and any related agreements, documents, or other instruments may be  
26 modified, amended, or supplemented by the parties thereto in accordance with the terms thereof  
27 without further order of this Court, provided that any such modification, amendment, or

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1 supplement is designed to conform the APA to the Auction results or is otherwise not materially  
2 adverse to the interests of the Chapter 11 Estate.

3 13. The Court having concluded that the Successful Bidder is a good faith purchaser  
4 under Section 363(m) of the Bankruptcy Code, the sale of the Transferred Assets to the  
5 Successful Bidder and the purchase of the Transferred Assets by the Successful Bidder constitute  
6 a sale and purchase in good faith and for fair value within the meaning of Section 363(m) of the  
7 Bankruptcy Code and the parties to the APA are entitled to all of the protections afforded by  
8 Section 363(m) of the Bankruptcy Code.

9 14. The Midtown Niki Group LP is approved as the back-up bidder (the "Back-Up  
10 Bidder") with a qualifying bid for the Transferred Assets in the amount of \$1,410,000. The bid of  
11 the Back-Up Bidder shall be irrevocable until the earlier of 24-hours after the closing of the sale  
12 to the Successful Bidder or the day after the outside closing date of February 17, 2010, as  
13 provided for in the APA and this Order. If the Successful Bidder fails to consummate the sale  
14 according to the terms of the APA and this Order on or before the outside closing date of  
15 February 17, 2010, or such later date as may be approved either by the parties to the APA and the  
16 Back-Up Bidder, or by court order, the Trustee is authorized to consummate the sale to the Back-  
17 Up Bidder consistent with the Sale Procedures without further order of this Court. Such sale to  
18 the Back-Up Bidder shall be pursuant to the terms and conditions of the Asset Purchase  
19 Agreement for the Transferred Assets executed by the Back-Up Bidder, and otherwise on the  
20 same terms and conditions as set forth in this Order, including, but not limited to, the  
21 determination that the Back-Up Bidder is also an entity that proposes to purchase the Transferred  
22 Assets in good faith pursuant to Section 363(m) of the Bankruptcy Code, and is entitled to all the  
23 protections of that provision. The term Back-Up Bidder as used in this Order shall include any  
24 assignee of The Midtown Niki Group LP pursuant to any assignment of the buyer's rights under,  
25 and consistent with the requirements of, the APA; provided, however, that if the assignee is an  
26 entity other than an affiliate of The Midtown Niki Group LP falling within the scope of the  
27 Declaration of The Midtown Niki Group LP (David Trakman) filed on January 28, 2010, absent  
28 further evidence paragraph 13 of this Order shall not apply to such assignee.

15. Should the Successful Bidder fail to consummate the sale because of a breach or failure to act on the part of the Successful Bidder, the good faith deposit of the Successful Bidder shall be forfeited to the Trustee, and Trustee shall retain the right to seek any and all other remedies and damages as may be provided for in the APA.

16. The provisions of Federal Rule of Bankruptcy Procedure 6004(h) are hereby waived so that this Order shall be effective and enforceable immediately upon entry.

17. This Court shall retain jurisdiction to hear and determine all matters arising from the interpretation and implementation of this Order.

APPROVED AND AGREED TO BY:

PYLE SIMS DUNCAN &amp; STEVENSON

By: Peter L. Duncan  
Peter L. Duncan  
Counsel for Jack in the Box Inc.

FRIEDMAN STROFFE & GERARD, P.C.

By: Lydia J. Lake  
Counsel for Bank of New York

MCDONOUGH HOLLAND & ALLEN PC

By: Mary E. Olden  
Counsel for the Forsters

PARKINSON PHINNEY

By: Thomas A. Phinney  
Attorneys for the Official Committee of  
Unsecured Creditors

DOWNEY BRAND LLP

By: R. Dale Ginter  
Attorneys for Abe and Kobra Alizadeh

FRANK LAW GROUP

By: David E. Frank  
Counsel for Newcastle Powerhouse LLC

Dated:

UNITED STATES BANKRUPTCY JUDGE

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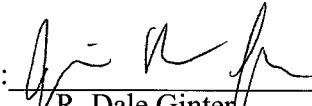
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27 UNITED STATES BANKRUPTCY JUDGE

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Order Approving Sale of Real Property  
[1075 South Main Street]

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24 Dated: February 14, 2010

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28 United States Bankruptcy Judge